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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-29

March 29, 2024

James Alford, Applicant

Office of the State's Attorney for Baltimore City, Custodian

On August 12, 2023, James Alford sent a Public Information Act ("PIA") request to the Office of the State's Attorney for Baltimore City ("BCSAO") seeking records related to certain criminal cases and to applications for statements of charges that Mr. Alford filed in 2022 and 2023. Two days later, Mr. Alford sent two more PIA requests for different records related to those same matters.¹ The BCSAO sent its first ten-day letter regarding those PIA requests on August 15, 2023.² That same day, after the letter was sent, the BCSAO received four more requests from four purportedly different individuals seeking the same records Mr. Alford asked for in his requests.

In the three months that followed, the BCSAO received more than sixty PIA requests—excluding the first three requests sent by Mr. Alford—for records related in some way to criminal matters involving Mr. Alford and Louis Leibowitz that were heard in the District Court of Maryland for Baltimore City. Many of the requests sought information about subpoenas filed by Mr. Leibowitz's counsel. Some sought records related to the manner in which certain Assistant State's Attorneys ("ASA") handled the matters; some sought records that targeted certain specific ASAs in particular, whom many of the requesters accused of misconduct and corruption. Others sought records and information about statements of charges that allegedly went "missing" because they were "intercepted" by the allegedly corrupt ASAs. Though the requests varied to some degree in the records they asked for, all of the requests related to James Alford and dissatisfaction with how the district court cases in which he had been involved had proceeded and were handled by the BCSAO. And nearly all of the requesters appeared to have detailed and specific knowledge of those cases and the events that transpired while they were pending.

¹ Mr. Alford ultimately filed a complaint regarding the BCSAO's responses to his three PIA requests. That complaint was resolved in favor of the BCSAO, as we concluded that the BCSAO had not violated the PIA. *See* PIACB 24-27 (Mar. 6, 2024).

² *See* Md. Code Ann., Gen. Provisions § 4-203(b)(2) (requiring "[i]f the custodian reasonably believes that it will take more than 10 working days to produce the public record," a custodian to provide notice in writing within ten working day of receipt of the PIA request that includes the amount of time it will take to respond, an estimate of possible fees, if any, and the reason for the delay).

In early October 2023, the BCSAO contacted the Public Access Ombudsman and requested mediation regarding the large volume of James-Alford-related requests (collectively “Alford-related requests”) it was receiving. The BCSAO continued to receive requests, including requests sent from new email accounts, while the matter was pending with the Ombudsman. On November 7, 2023, the Ombudsman issued a final determination that terminated the mediation as unresolved. On December 6, 2023, the BCSAO timely filed this complaint alleging that these requests are “frivolous, vexatious, or in bad faith.” § 4-1A-04(b).³ After careful consideration of the BCSAO’s complaint, Mr. Alford’s response, responses from the other email accounts, and the many submissions supplied by the parties, and based on the unique and unusual facts of this entire record, we find that the Alford-related requests are indeed vexatious and made in bad faith. We therefore order that the BCSAO may ignore these requests and any subsequent or future requests for records related to James Alford, Louis Leibowitz, and the matters involving them heard in the District Court of Maryland for Baltimore City between January 2022 and the end of 2023. We explain why below.

Background

To understand our resolution of this complaint, it is necessary that we lay out the factual background, including the substance of the PIA requests, in some detail—although we do not include the requests or other communications here word-for-word. The excerpts of the PIA requests are taken from an exhibit the BCSAO attaches with its complaint. The exhibit contains the PIA requests the BCSAO received between August 12 and November 17, 2023. In some instances, we have placed emphases on certain words or phrases. We start with the requests sent by James Alford in August.

Mr. Alford’s first PIA request began by alleging that an ASA “from the domestic violence unit made an **entry** into the domestic unit’s files” that was “**false**.” That “**entry**” was that James Alford had “called up the unit and indicated that [he] did not want to proceed with [a] case.” Mr. Alford’s request asked for “the records pertaining to this **entry**, and the name of the attorney that made this **entry**.” Mr. Alford’s first PIA request also sought “information related to several application [sic] for statement of charges that were **passed up** from the commissioner’s office to the [BCSAO].” Specifically, Mr. Alford stated that he wanted to “know what the [BCSAO] made as a charging recommendation to the commissioners, and what the commissioners’ charging decisions were.” Mr. Alford provided five specific dates on which he filed those applications for statements of charges.

Mr. Alford’s second PIA request asked for “all the information” that the BCSAO had regarding “Maryland subpoenas that were filed and **domesticated** in the State of

³ Statutory citations are to the General Provisions Article of Maryland’s Annotated Code unless otherwise stated.

California.” Mr. Alford attached the subpoenas in question and included the following statements about the subpoenas in his request:

The individuals issuing them indicated that they issued them on behalf of the State of Maryland for case 4B02440449 and case 0B02440417.

* * *

[T]he individuals issuing them issued them in violation of my rights and **consumer protection laws**, and the individuals issuing them were seeking to illegally obtain information and documents related to me.

The prosecutor that was associated with the related cases (4B02440449 and 0B02440417) for which the subpoenas were issued was ASA Kathleen Copsey.

Mr. Alford also noted that he was a “person of interest”⁴ because he was “involved in the related cases.”

Mr. Alford’s third PIA request sought:

[A]ll information related to any plea bargain or deferred prosecution discussion that ASA Kathleen Copsey (see attached) arranged with with [sic] Mr. Louis Leibowitz and his counsel as it pertains to case 4B02440449 and for him to avoid and delay prosecution.

Please also provide all information and legal justification as it pertains to ASA Kathleen Copsey and her ability to inhibit my civil rights to file a statement of charges and or report a crime to a law enforcement agency.

Again, Mr. Alford noted that he was “a person of interest,” and asserted that he had “a right to know what the details of this arrangement were, which was apparently made off the records [sic] and without [his] knowledge.”

The BCSAO sent a ten-day letter regarding Mr. Alford’s first PIA request on August 15, 2023. In addition to indicating that it would take longer than ten days to process his request, that letter advised Mr. Alford that the BCSAO had begun to search the file associated with case number 4B02440449, and that all records had to be reviewed and redacted. The BCSAO provided a “non-exhaustive list of materials that are not subject to disclosure.” The BCSAO also explained that “[i]f and when the file is located,” it would “estimate approximately how long it will take to review all responsive records, and provide

⁴ See § 4-101(g) (defining “person in interest” to include “a person . . . that is the subject of a public record”).

an estimate of any fees associated with completing this request.” In short, the BCSAO advised Mr. Alford that it would take some time to produce the records—which would likely be redacted—and that it may cost Mr. Alford money to obtain them.

On that same day, after the ten-day letter was sent to Mr. Alford, the BCSAO received four more PIA requests. Three of them asked for records related to the same subpoenas that Mr. Alford had attached to his second PIA request.

Specifically, on August 15, 2023, at 9:01 p.m., an individual identified only as “CB” in their email request asked for “all information” related to a “counterfeit subpoena issued on 9/20/2022” and a “counterfeit subpoena issued on 11/7/2022 and fraudulently **passed** and filed as a ‘**true and correct copy**’ in a California Court.” The request asked the BCSAO to “indicate if a **notice to consumer objection form** was served prior to serving the subpoena on google,” and stated that:

The attorney that issued them indicated that he was issuing them for case 4B02440449 and 0B02440417 on behalf of the state of Maryland. The ASA associated with this case was ASA Kathleen Copsey.

The request also asked the BCSAO to “verify if the document filed in California is a ‘**true and correct copy**’ issued from the Baltimore court and please verify if the envelope is a **proof of service** or any sort of **return of service** filed with the court.”

Then, on August 15, 2023, at 9:23 p.m., an individual identified only as “Fialon” also sent a request for “all information” related to the same subpoenas, including “if there is any **return of service or proof of service**” and “if any of these subpoenas were issued or certified by the court, and if there is a **true and correct copy** certificate for the subpoena that was filed in California.” In a fashion very similar to Mr. Alford’s second PIA request and the request from “CB,” this request stated:

The attorney that issued these indicated that he issued them on behalf of the state of Maryland for case 4B02440449 and 0B02440417 to aid in the prosecution. The ASA that he was collaborating with was ASA Kathleen Copsey.

Like the requests from Mr. Alford and “CB,” this request also asked the BCSAO to “provide a copy of the **notice to consumer objection form** and the **proof of service**, as this was required to be served on all consumers prior to serving google with any subpoena requests.”

Just over two hours later, at 11:39 p.m., “Thuy Nguyen” sent a PIA request that asked the BCSAO to “provide all records and information” related to the same subpoenas, including:

[T]he **proof of service**, which case files it was filed under, the true copy certificate that was used to file it in the California court, and the **notice to consumer objection forms** that were legally required to be served on all the consumers before issuing the subpoena. And **return of service** for all the related documents.

Like Mr. Alford, “CB,” and “Fialon,” this request included a statement that:

This subpoena is related to the case 0B02440417, the State of Maryland vs. James Alford, as indicated in the notice. The prosecutor assigned to this case was ASA Kathleen Copsey.

The request also asserted that the subpoenas did not “have a seal of a court,” did not “appear to be a certified **true and correct copy**,” and were not “found in any Maryland case files.”⁵

The BCSAO had issued final response letters to all three of Mr. Alford’s PIA requests by September 16, 2023. Those letters advised that the BCSAO was unable to locate any responsive records. By that time, the BCSAO had received a total of thirty-nine PIA requests for records that involved James Alford in some way, including four that came in between the hours of 8:07 p.m. and 10:31 p.m. on September 16, after the response letter issued. Many of these requests revealed an extraordinary familiarity with the details of the cases involving Mr. Alford and the way that the cases had proceeded. For example, a request from an individual identified only as “SM” (August 15, 2023, 11:02 p.m.) sought records related to case 0B02440417 and explained that:

⁵ On the following day, August 16, 2023, the BCSAO received three more substantially similar PIA requests related to these allegedly counterfeit subpoenas.

From an individual identified only as “Matt” at 5:30 p.m., who asked for, among other things, “**return of service / proof of service / certificates of service**” and “**Notice to Consumer Objection forms**,” and advised that: “The related Maryland case number is 0B02440449. The prosecutor assigned to this case was ASA Kathleen Copsey.”

From an individual identified only as “Maddy” at 8:00 p.m., who asked for, among other things, the “**return of service / certificate of service**” and “**notice to consumer objection form**,” and explained that: “These subpoenas were issued for case 4B02440449 and 0B02440417 on behalf of the ‘state of Maryland.’ The prosecutor assigned to these cases was a lady named Kathleen Copsey.”

From an individual identified only as “Tod” at 8:45 p.m., who asked for, among other things, the “**return of service and proof of service**,” and stated that: “The individual who requested the subpoenas and his attorney both indicated that they had issued them for cases 4B02440449 and 0B02440417, but I could not find them in either of these case files. They appear to be forged or counterfeited. They indicated that the prosecutor in charge of these cases was a lady named Kopsi.”

This case was filed on 9/9/2022. On 10/20/2022, prosecutor ASA Kathleen Copsey amended the charging document in open court to charge the defendant for “criminal harassment” exclusively for an event that occurred on 9/2/2022, because the “victim,” Louis Leibowitz, had been “falsely charged with perjury” and “per his therapist,” it constituted as “domestic abuse.” Crazy, am I right? Not surprised this case ended in an acquittal.

The request asked for “confirmation” whether, as “indicated on the record, in open court,” the prosecution had “provided the defendant all available discovery,” and “if James Alford could refile the perjury charges against Louis Leibowitz.” Another request, from “sydalshrqy91”⁶ (August 18, 2023, 12:06 a.m.) wanted “all the impeachment and Brady material that was provided to ASA Kathleen Copsey and ASA Hannah Dier from the general public,” including “emails and documents from Mary Abrams, the clerk of the court, that were forwarded to these two ASAs.” The request advised that “[s]everal of these items were provided directly to the BCSAO’s main email, in addition to their work emails.”⁷

Many of the PIA requests the BCSAO received also focused on the alleged “**false entry**” that was the subject of Mr. Alford’s first PIA request. For example, on September 16, 2023, at 8:07 p.m., “CB” asked for, among other things, “all records, information, and documents” of “Kathleen Copsey’s involvement in making **false entries** into court records.” Also on September 16, 2023, but at 8:49 p.m., “Lionel Rodriguez” requested “all

⁶ The name associated with this request is written in the Arabic alphabet. We therefore refer to the username portion of the email address from which the request was sent.

⁷ See also requests from:

“Maddy” (August 18, 2023, 12:02 p.m.), records related to “counterfeit subpoenas and forged documents in the BCSAO records, as it pertains to the criminal cases brought forth against Louis Leibowitz and Arnold Abraham on 12/30/2022, 4/25/2023, 6/30/2023, and 7/22/2023.” The request noted that “[t]he evidence was submitted to ASA Justin Dickman and ASA Saleem Safdar,” and that they were “also communicated to ASA Bjorklund, ASA Copsey, ASA Halvorsen, and ASA Dier on several occasions.”

“Pierre Nicolas” (August 23, 2023, 11:31 p.m.), “a copy of all records and information [a] private attorney provided or attempted to provide the BCSAO and prosecution for case 0B02440417 on the following dates and to the following ASAs.” The request referenced ASAs Copsey, Dier, and Halvorsen, and listed five specific dates between October 2022 and March 2023.

“Lindsey Larkin” (September 23, 2023, 2:25 p.m.), “all releasable information” about the BCSAO’s “discussions with ASA Hannah Dier, as mentioned in approximately 4 different contradictory affidavits in the BCSAO’s possession, two of which were filed on 8/24/2022, and two of which were filed on 9/9/2022, and two other documents on BCSAO stationary from ‘Erin Murphy,’ the henchwoman of the federally indicted Marilyn Mosby.”

documents, records and information related to the BCSAO's domestic violence unit making **false entries** into judicial records." The next day, on September 17, 2023, at 11:39 a.m., "Phil Garcia" sent a PIA request that alleged that a police report—which was the subject of his request—"indicates that a Baltimore City prosecutor **falsely entered** into [the] case file of 4B02440449 that the victim of case 4B02440449 did not want to proceed." On September 20, 2023, at 12:19 a.m., "Alex Ziegler" requested the same police report and stated that the report "indicates that a prosecutor named Kathleen Copsey had been making **false entries** into judicial records without the victim's knowledge." And, on November 17, 2023, at 1:38 a.m., an individual identified only as "Blandine" asked for records of "'Louis Leibowitz' and 'Arnold Abraham' counterfeiting court documents and making **false entries** into court records with the facilitation of BCSAO staff, to include 'Kathleen Copsey.'"

Like Mr. Alford's, many of the requests also focused on ASA Copsey and accused her of misconduct related to the applications for statements of charges that Mr. Alford had filed. For instance, "SM" (August 17, 2023, 8:13 p.m.) asked to "know when ASA Kathleen Copsey **intercepted** [a] charging document from ASA Saleem Safdar," and "when ASA Kathleen Copsey entered into an agreement . . . to **intercept** the charging document and to prevent anyone from filing a statement of charges." On August 19, 2023, at 9:07 a.m. "Maddy" asked for "any info or records" of "how many charging documents [ASA Copsey] **intercepted** and made disappear."⁸ Similarly—albeit without using the

⁸ Other PIA requests—which, notably, used similar terminology and, in one instance, were sent one after the other—expanded the accusations of misconduct to include additional ASAs. On August 23, 2023, at 9:14 p.m., "Tod" sent a request that alleged that "ASA Hanna Dier and ASA Kathleen Copsey revealed that a complaint had been filed with them in open court, on record, in an **attempt to weaponize** the fact that a complaint had been filed against them and retaliate against the defendant of the **acquitted and baseless case**." Then, on October 7, 2023, at 9:25 a.m., "SM" asked for, among other things, "[a]ll documents, records and information related to ASA Hannah Dier Harrnaft [sic] **attempting to weaponize** that she had been referred to the Maryland AGC for professional attorney misconduct against James Alford in open court in the **frivolous and acquitted case** she initiated and continued."

On September 10, 2023, at 11:49 a.m., "Fialon" asked for:

[A]ll documents, records, and information . . . that document how ASA Dier and Copsey target and retaliated against Mr. Alford for reporting their illegal activity to the police and to the proper disciplinary authorities, to include victim/witness tampering, obstruction of Justice, subornation of perjury, and **aiding and abetting** in counterfeiting court documents.

On September 16, 2023, at 8:07 p.m., "CB" asked for, among other things, "[a]ll documentation and information related to Kathleen Copsey and Hannah Dier Hartranft **aiding, abetting, and assisting** Louis Leibowitz in his criminal activity and to **avoid detection**."

Not even an hour later, on September 16, 2023, at 8:49 p.m., "Lionel Rodriguez" asked for "all documents, records and information related to ASA Kathleen Copsey **aiding and abetting** the

term “intercepted”—“Phil Garcia” (September 17, 2023, 11:39 a.m.) sent a PIA request stating that ASA Copsey “had entered into a corrupt deal to nolle pros criminal defendant Louis Leibowitz’s perjury charges and not allow the victim to refile the charges with the district court commissioners **without [her] permission.**” Later, on October 14, 2023, at 5:56 p.m., an individual identified only as “JD” requested “any information” related to “ASA Kathleen Copsey . . . making an illegal arrangement with ‘Louis Leibowitz’ to deny another person’s ability to file a statement of charges **without her permission.**”⁹

As the Alford-related PIA requests accumulated, some requests started to focus on the BCSAO’s PIA officer, accusing him of misdeeds. The first came from “Rachel Garcia,” on September 28, 2023, at 6:13 p.m., when she asked for records of “Marke Cross Esq. withholding records and proving [sic] false information to MPIA requesters,” and “Marke Cross Esq. threatening MPIA requestors who don’t want to provide him with personally identifying information or speak with him on the phone.” The following day, September 29, 2023, at 11:17 p.m., “Lionel Rodriguez” asked for “[a]ll documents records, and communications related to Marke Cross Esq. knowingly and willing [sic] concealing the existence of and unlawfully denying access to public records.” On October 6, 2023, at 8:24 p.m., “Adam Barry” sent a PIA request that alleged that “‘Marke Cross’ had put out a directive to nolle pros case 4B02470094 without the victims [sic] knowledge and just before the intended trial date.” The next day, an individual identified only as “AR” (October 7, 2023, 12:47 p.m.) asked for records of “Marke Cross releasing confidential police reports and information for ongoing criminal investigations in violation of MPIA disclosure laws.” On November 5, 2023, at 10:59 p.m., “Paola Martinez” requested, among other things, “[a]ll emails ‘Marke Cross’ produced requiring PIA applicants to talk on the phone, provide personally identifying information, or refer to ombudsman mediation,” and “[a] copy of each PIA request ‘Marke Cross’ ignored simply because it was viewed as ‘harassing.’”¹⁰

criminal defendant of case 4B02470094, Mr. Leibowitz, to **avoid detection** and prosecution of his counterfeiting and perjury crimes.”

⁹ One PIA request targeted one of the named ASA’s personal matters. The request, from an individual identified only as “Brie” (September 16, 2023, 10:31 p.m.), cited numerous civil matters in State court and two federal bankruptcy cases and asked for “copies of all available documents, records, and information that relate to the wage garnishment, open judgments and bankruptcy information” against the ASA.

¹⁰ There are more PIA requests that accuse ASA Cross of similar misconduct, many from the same requesters already identified above. We do not recount all of those requests here.

In addition, on August 18, 2023, at 11:54 a.m., “Fialon” sent a detailed PIA request for records related to the BCSAO’s updates to Appendix J of the Public Information Act Manual. The request closed with a general ask for “any records, information, or statistics that shed insight as to why the BCSAO is generally incompetent.” This request in particular caught our eye because, on August 17, 2023, at 9:40 p.m., this Board received a PIA request that was nearly word-for-word identical, but from a purportedly different requester—“sydalshrqy91,” who is mentioned

Despite the large volume of the Alford-related requests—which we assume were not the only PIA requests that the BCSAO received between the months of August and November, 2023—the BCSAO issued substantive responses to many of them. The BCSAO provides those responses in an exhibit attached to its complaint. All told, the BCSAO issued approximately thirty-one substantive response letters—i.e., letters in which inspection of records was either granted or denied.¹¹ Eighteen of those letters indicated that the BCSAO was unable to locate any responsive records. Three letters denied inspection altogether. Ten letters granted inspection and provided an internal BCSAO OneDrive link containing the responsive records.¹² The letters issued on various dates between August 17 and September 28, 2023. By early October, however, the BCSAO had approached the Public Access Ombudsman and requested mediation regarding the Alford-related requests. Thus, rather than responding substantively to the PIA requests it received from late September on, the BCSAO began instead to send notice that the requests had been referred to the Ombudsman for mediation.¹³

As the BCSAO issued its responses to some of the PIA requests and made efforts to clarify others, the communications from many of the requesters grew increasingly uncivil and indecorous. We provide only a few examples here, which are taken from an exhibit attached to the BCSAO’s complaint. “CB,” who sent a total of four PIA requests between August 15 and October 25, 2023—two of which received substantive responses—wrote (October 26, 2023, 1:35 p.m.), in response to the BCSAO’s notification that her request had been referred to the Ombudsman: “That office probably hates you.”

“Maddy,” who sent a total of five PIA requests between August 16 and October 25, 2023, alleged (October 8, 2023, 4:13 p.m.) that the BCSAO’s PIA officer “illegally posted the rape investigation in which Mr. Alford is the victim on the internet to humiliate him

above. We responded to that PIA request, and provided a single responsive email record, on August 18, 2023, at 11:23 a.m.—or approximately half an hour before “Fialon” sent this request to the BCSAO.

¹¹ The BCSAO also issued numerous ten-day letters. *See supra*, note 2.

¹² The letters granting inspection also indicated that there were other responsive records for which inspection was denied or that there were no records responsive to a different portion of the PIA request. In a few cases, the letters granted inspection of some records, denied inspection of others, and indicated other responsive records did not exist.

¹³ We note that § 4-203(d)(2) provides that “[a]ny time limit imposed under this section . . . if the applicant or custodian seeks resolution of a dispute under Subtitle 1A or 1B of [the PIA], shall be extended pending resolution of that dispute.” *See also* § 4-1B-04(a)(9) (empowering the Ombudsman to “make reasonable attempts to resolve disputes between applicants and custodians,” including disputes about “a request or pattern of requests from an applicant that is alleged to be frivolous, vexatious, or made in bad faith”). Section 4-203(d)(2) applies to the BCSAO’s time to respond to the PIA requests for which it had requested mediation.

and then nolle prossed his case out of spite.” “Maddy” continued on to state: “I just wanted to let you know that you’re a bad person and that’s the type of things bad people do.” Later, after the BCSAO advised of the Ombudsman referral, “Maddy” wrote (October 27, 2023, 12:41 a.m.):

None of my requests are frivolous or in bad faith. They are going directly to the office of the state prosecutor and bar counsel. You should probably be careful with your frivolous mediation requests at this point, you never know who might be investigating you and who has been BCC’d on emails.

Bless your heart.

“Rachel Garcia”—who sent three PIA requests—responded similarly to the BCSAO’s notification that her requests had been referred to the Ombudsman. On October 16, 2023, at 12:59 p.m., “Rachel Garcia” wrote:

Just because you refer something to mediation does[n’t] mean it will get accepted to mediation.

Particularly when it is very clear you are withholding documents that incriminate you for revenge porn.

Looking forward to seeing those documents tho.

Less than half an hour later, on October 16, 2023, at 1:25 p.m., “Rachel Garcia” wrote again: “Marke, I just referred this matter to the OSP. Revenge porn = bad. You = bad.”

Finally, an extended exchange with “Tod,” who sent a total of six PIA requests, became increasingly rude and disrespectful after the BCSAO notified him of its belief that the Alford-related requests were frivolous, vexatious, or made in bad faith. After expressing disbelief at the BCSAO’s position, “Tod” (September 26, 2023, 7:00 p.m.) wrote:

For starters, you might want to update your fucking MPIA contact roster and ensure that your agencies’ own employees are trained enough to know to forward MPIA requests to you before you start bitching and moaning about “duplicative and vexatious” requests. That’s literally a training issue that is your problem, not mine. That’s also one of the duties of an MPIA office, so you really might want to get working on that.

Secondly, it really shouldn’t take beyond the permissible 30 days to locate a piece of paper. If you are deliberately withholding information to cover the asses of people in your office, then maybe you should start looking for a new

job. The fact that your own agency has put you in a position where you have to engage in delay tactics and intentionally withholding information to cover for the very blatant misconduct in your office should probably be an indicator that the BCSAO is not the job for you. Unless you're trash and have no standards, but that's your call to make, not mine.

Lastly, literally nothing requires me to call your ass up, provide you my personal information and telephone number, or even to identify myself.

I don't want to talk to you—I have a boyfriend. I'm not interested.

The next day (September 27, 2023, 3:23 p.m.), “Tod” wrote:

Markie,

I'm sorry your office is incompetent and throwing you under the bus. You're probably a good person, just working in a bad place. They are probably also telling you to intentionally withhold information and delay requests to obstruct their misconduct investigations.

And, after “Tod” sent another PIA request and the BCSAO again sent notice that the request had been referred to the Ombudsman, “Tod” wrote (October 17, 2023, 5:47 p.m.): “Does she mediate for OSP misconduct hearings tho? Sending you my thoughts and prayers, -Tod <3”¹⁴

As noted above, the BCSAO contacted the Ombudsman in early October for assistance with the high volume and repetitive nature of the PIA requests it had received related to James Alford. According to the Ombudsman's final determination, the dispute presented for mediation was the BCSAO's allegation that the Alford-related PIA requests that were “sent from various email accounts” were frivolous, vexatious, or made in bad

¹⁴ The BCSAO sought to clarify some of the PIA requests by asking the requester for time to speak on the phone. Nearly all of them declined—some after several email exchanges about what would be discussed—and framed their refusals in further misconduct allegations against the PIA officer. For instance, “Pierre Nicolas” (September 25, 2023, 5:47 p.m.) wrote: “I was told not to speak to you on the phone and to let you provide responses in writing to avoid retaliation. Sorry . . .” And, on September 27, 2023, at 9:27 p.m., “sydalshrqy91” wrote: “You already lied to me in an MPIA request and then put me on blast for trying to be helpful. Why do you think I want to talk to you on the phone? Your request has been denied.” Finally, “Maddy” (September 28, 2023, 5:54 p.m.) wrote: “Your creepy request for a phone call has been denied. I heard you intentionally provided false information on several PIA requests and that you are now threatening people. If you don't promptly provide the information I requested truthfully and with transparency, I will be escalating this to the next level.”

faith because “(1) the 57 requests were made by or at the behest of a single person, James Alford, and (2) the requests [were] substantially similar and repetitive.” The final determination, issued on November 7, 2023, indicates that the mediation was “terminated with the dispute unresolved.”

The BCSAO submitted this complaint on December 6, 2023. The complaint alleges that the Alford-related requests that the BCSAO has received are frivolous, vexatious, or in bad faith and provides several reasons for its position. First, the BCSAO notes that the requests all ask for “the same records stemming from the same cases involving James Alford,” which received “entries of nolle prosequi for the final dispositions.”¹⁵ In the BCSAO’s experience, “[i]t is highly unusual for nolle prosequi cases to generate this much public interest.” The BCSAO also points to the timing of the requests, explaining, “we have noticed that once we deny a request, there will be at least two additional requests from suspicious email accounts for the same records made the following day,” and that the same occurs also when PIA requests are granted. And, the BCSAO asserts, in at least two instances, the records requester responded to the BCSAO’s efforts to clarify the request by providing some or all of the documents identified in the PIA request.

Stressing that many of the PIA requests sought “the same records that are either nonexistent or have been previously provided through the MPIA process,” the BCSAO takes the position that James Alford “created these numerous ‘burner’ email accounts for the purpose of harassing [the BCSAO] by flooding it with MPIA requests for documents already in his possession.” To support this position, the BCSAO notes that many requesters “did not provide their full names and used email addresses from encrypted email accounts using the ‘proton.me’ suffix.” Even more, the BCSAO contends, the requests all asked for “the same records and used identical or similar terminology and phrasing in their correspondence.” As example, the BCSAO points out that some requesters “referred to their second request as ‘Season 2’ or ‘Part 2’ and stated that charging documents were ‘passed up’ from the Commissioner to [the BCSAO].” Others “requested dates when certain individuals ‘became aware’ of a particular event, or suggested that our ASAs have ‘intercepted’ criminal complaints filed by Mr. Alford.”

The BCSAO also points to the requesters’ reliance on email—which permits a certain degree of anonymity—as a means of communication with the BCSAO. In fact, the BCSAO asserts that the requesters “declined or avoided our offers for phone calls to discuss their requests,” which the BCSAO made “[g]iven the large number of requests and the dissatisfaction . . . with our responses.” The BCSAO notes that two requesters provided

¹⁵ See Md. Code Ann., Crim. Proc. § 1-101(k) (“‘Nolle prosequi’ means a formal entry on the record by the State that declares the State’s intention not to prosecute a charge.”) Although not unfettered, “[g]enerally, entering a nolle prosequi is a part of the ‘broad discretion’ vested in the State’s Attorney.” *State v. Simms*, 456 Md. 551, 561 (2017); see also 84 Md. Op. Att’y Gen. 73, 85 (1999).

Mr. Alford's phone number, but then refused the phone call once the BCSAO pointed out that the number belonged to Mr. Alford. This, the BCSAO contends, is additional evidence that Mr. Alford is responsible for all of the requests.

The complaint states that, as of December 6, 2023, the BCSAO has received seventy-four PIA requests from these various email accounts. The BCSAO explains that the requests are "burdensome" and "have become increasingly abusive," with some requests containing "insulting, demeaning, threatening, and profane language toward members of [the BCSAO's] staff." Ultimately, based on the "frequency and repetitiveness" of the requests, "plus the abusive language," the BCSAO urges us to find that the requests are frivolous, vexatious, or in bad faith.

In response, Mr. Alford asserts that we should dismiss the complaint because "it is improper and ironically frivolous itself." He maintains that he made "approximately 3 interrelated PIA requests for documents and records in the possession of the BCSAO," and that he "tried to be as detailed as possible in [his] requests to assist the PIA officer in locating the documents." Contending that the BCSAO's PIA officer "has upset a lot of people for a lot of different reasons," Mr. Alford suggests that the BCSAO "is now trying to somehow victim blame [him] for [the PIA officer's] actions and attribute all the problems he created to [Mr. Alford]." Mr. Alford denies that his PIA requests were frivolous or vexatious. And, though he does not expressly state so, Mr. Alford implicitly denies that he had anything to do with the requests that the BCSAO received for Alford-related records from other email accounts by framing the BCSAO's complaint as "trying to portray that [he] is somehow responsible for 70+ requests from like 20+ different people." Instead, Mr. Alford counters that "[s]ome of the documents and records [he] was denied access to, apparently [the BCSAO] provided to other individuals, which would indicate [the BCSAO] was deliberately withholding documents and records from [Mr. Alford] in particular."¹⁶

The BCSAO's reply argues that "Mr. Alford has failed to address or establish why the requests that were submitted by him and his associates are not frivolous, vexatious, or made in bad faith." Noting that Mr. Alford's response contains "various baseless accusations of impropriety . . . without offering any evidence to buttress his defamatory remarks," the BCSAO contends that it has "submitted evidence in support of its position that [Mr. Alford] and his associates have engaged in a pattern of requests that are frivolous, vexatious, or made in bad faith."¹⁷

¹⁶ Mr. Alford's response provides a very detailed narrative of the alleged events driving his PIA requests. We do not recount that narrative here. Mr. Alford's response also contains numerous accusations of wrongdoing by the BCSAO's PIA officer and the Public Access Ombudsman. We decline to detail those, as they are irrelevant to our decision.

¹⁷ Though we did not do it initially, during the course of our review we determined that we needed to send the BCSAO's complaint to the twenty-five other email accounts identified by the BCSAO

Analysis

In addition to complaints from PIA requesters challenging, e.g., a custodian's denial of inspection, § 4-1A-04(a)(1)(i), the PIA authorizes us to review and resolve complaints from custodians "alleging that an applicant's request or pattern of requests is frivolous, vexatious, or in bad faith," § 4-1A-04(b)(1). Although the list is not exclusive, the PIA specifically directs us to assess "the totality of the circumstances including the number and scope of the applicant's past requests and the custodian's responses to past requests and efforts to cooperate with the applicant." § 4-1A-04(b)(3). If we determine that the request or pattern of requests is frivolous, vexatious, or in bad faith, we must issue a written decision and order "authorizing the custodian to . . . ignore the request that is the subject of the custodian's complaint" or "respond to a less burdensome version of the request within a reasonable time frame." § 4-1A-04(b)(2) and (3); *see also* COMAR 14.02.07.04D(2) (Board may authorize the custodian to "[i]gnore any future requests that are substantially the same as the request that is the subject of the custodian's complaint").

As with a decision to deny inspection of public records, a custodian bears the burden of demonstrating that a "request or pattern of requests" is frivolous, vexatious, or in bad faith. *See Cranford v. Montgomery County*, 300 Md. 759, 780 (1984). In Maryland, "[i]t is well established that 'preponderance of the evidence [is] the standard of proof generally applicable in civil actions.'"¹⁸ *Romero v. Perez*, 463 Md. 182, 197 (2019) (quoting *Shurupoff v. Vockroth*, 372 Md. 639, 659 (2003)); *see also Coleman v. Anne Arundel County Police Dep't*, 369 Md. 108, 134 (2002) (discussing the preponderance of the evidence standard and noting that "generally that standard also is applicable in administrative proceedings"). To prevail here, then, the BCSAO must prove that it "is

and ask for their responses to the complaint. We received approximately seventy emails in response and we have considered all of them. Due to the volume, we do not recount them in detail. Nearly all responses stated, in some fashion, that their PIA requests were not frivolous, vexatious, or in bad faith, and that no one compelled them to make the request. Most responses also accused the Ombudsman of mishandling the matter in mediation and contended that the BCSAO's complaint is retaliatory. A handful argued that, because the PIA refers only to an "applicant," and not "applicants," the complaint should be dismissed.

¹⁸ Maryland's Supreme Court has explained that a "heightened clear and convincing standard of proof only applies in certain limited circumstances" that arise "when the government seeks to take unusual coercive action—action more dramatic than entering an award of money damages or other conventional relief—against an individual," such as the termination of parental rights or involuntary civil commitment. *Romero v. Perez*, 463 Md. 182, 198 (2019) (cleaned up). Held against these sorts of actions, the potential relief afforded by § 4-1A-04(b)—an order permitting a custodian to ignore certain PIA requests, but not barring an applicant from ever making other PIA requests—is not particularly coercive or dramatic. *See also Coleman v. Anne Arundel County Police Dep't*, 369 Md. 108, 134-35 (2002) (clear and convincing evidence standard applies to deportation proceedings and withdrawal of life sustaining medical treatment).

more likely so than not so,” *Romero*, 463 Md. at 197 n.20, that “based on the totality of the circumstances” the PIA requests identified in its complaint are “frivolous, vexatious, or in bad faith,” and that James Alford is an “applicant” responsible for them, § 4-1A-04(b).¹⁹

We begin with a threshold question presented by the facts of this particular complaint. While the focus of § 4-1A-04(b) is on the “request or pattern of requests,” the statute modifies that phrase with the word “applicant.” All of the Alford-related requests are focused broadly on a small universe of specific records, but those requests purport to come from different “applicants” in that they have been sent from multiple email addresses (twenty-six of them) by requesters who, to varying degrees, provide names. Thus, we must determine whether all of the Alford-related requests can be fairly attributed to “applicant” James Alford in some way. We think that they can.

While the BCSAO may not have provided direct evidence that Mr. Alford is either operating all of these email accounts himself or encouraging others to make these requests (or some combination of both), we stress that “Maryland has long held that there is no difference between direct and circumstantial evidence.” *Hebron v. State*, 331 Md. 219, 226 (1993); *see also Taylor v. Giant of Maryland, LLC*, 423 Md. 628, 661 (2012) (“The distinction between direct and circumstantial evidence is vague . . . but more important it is irrelevant to assessing the strength of a party’s case. From the relevant standpoint—that of probative value—‘direct’ and ‘circumstantial’ evidence are the same in principle.”). Indeed, “[u]nder some circumstances, circumstantial evidence has been deemed ‘more certain, satisfying and persuasive than direct evidence.’” *Taylor*, 423 Md. at 652 (citation omitted). And, here, circumstantial evidence abounds.

First, there is the timing of the Alford-related requests. As the BCSAO notes in its complaint, many requests were sent on the heels of some arguably adverse action by the BCSAO—e.g., the issuing of a ten-day letter or a response stating that the BCSAO has no responsive records. For instance, on August 15, 2023, the BCSAO sent Mr. Alford a ten-day letter explaining that it would take some time to produce records, which would likely be redacted, and that there could be a fee for those records. It is fair to say that this letter was not necessarily well received. Within twenty-four hours, starting from the request from “CB” at 9:01 p.m. that same day, the BCSAO received seven PIA requests, six of them for records of the allegedly counterfeit subpoenas. On August 17, 2023, the BCSAO sent Mr. Alford a letter explaining that it had no records responsive to his request for subpoena-related records. Starting that evening at 5:29 p.m., with a PIA request from “Matt,” the BCSAO received four more PIA requests—and then one more, from “sydalshrqy91” sent at 12:06 a.m. on August 18. Then, on September 16, after the BCSAO sent Mr. Alford letters explaining that it had no records responsive to his two remaining

¹⁹ We note that, in this particular matter, we cannot conclude that the custodian must incur the time and expense to investigate and prove directly that all the emails in fact come from Mr. Alford personally in order to meet that burden.

PIA requests, the BCSAO received five PIA requests within a twenty-four hour period, beginning again with “CB,” at 8:07 p.m. And, notably, beginning on October 23, when the BCSAO began to notify many of the requesters of its belief that the Alford-related requests were frivolous, vexatious, and in bad faith, the BCSAO received nine new PIA requests in less than three days (from 12:14 a.m. on October 23 to 8:51 p.m. on October 25). As discussed below, most of these requests also accused the BCSAO’s PIA officer of some sort of misconduct.

But even more than the timing—which is enough to raise serious questions about the genesis of the Alford-related requests—the BCSAO’s arguments and evidence regarding the requests’ content convinces us that the Alford-related requests can be fairly attributed to Mr. Alford even if he did not send them all himself. We start with an example provided by the BCSAO. In his first PIA request, Mr. Alford asked for “information related to several application [sic] for statement of charges that were **passed up** from the commissioner’s office.” Five purportedly different requesters also use the phrase “**passed up**” to describe the manner in which the BCSAO receives charging documents from the district court commissioners.²⁰ Similarly, in his PIA request for subpoena records, Mr. Alford advised that the subpoenas were “filed and **domesticated** in the State of California.” Four other requests use the word “**domesticate**” in relation to those subpoenas.²¹ This seems an esoteric term that we would not necessarily expect the general public to use. In his subpoena-related request, Mr. Alford also stresses that the subpoenas were issued “in violation of [his] rights and **consumer protection laws**.” Five of the subpoena-related PIA requests that followed Mr. Alford’s specifically sought the “**notice to consumer objection form**,”²² another highly specific reference we would not expect to find in PIA requests sent completely independently and apart from one another.

The repeated use of specific legal-like phrases, terminology, or jargon in the PIA requests containing accusations of misconduct by one of the ASAs who handled the Alford / Leibowitz matters in district court is also telling. In his very first PIA request, Mr. Alford referred to an “**entry** into the domestic violence unit’s files” that was “**false**” and made by

²⁰ See “CB” (August 17, 2023, 5:45 p.m.); “Tod” (August 17, 2023, 6:50 p.m.); “Brad” (August 23, 2023, 5:23 p.m.); “Thuy Nguyen” (September 24, 2023, 5:02 p.m.); “AR” (October 7, 2023, 12:47 p.m.).

²¹ See “Matt” (August 17, 2023, 5:29 p.m.); “Pierre Nicolas” (August 18, 2023, 11:10 p.m.); “Lionel Rodriguez” (August 28, 2023, 12:13 a.m.); “Thuy Nguyen” (September 10, 2023, 8:10 a.m.).

²² See “CB” (August 15, 2023, 9:01 p.m.); “Fialon” (August 15, 2023, 9:23 p.m.); “Thuy Nguyen” (August 15, 2023, 11:39 p.m.); “Matt” (August 16, 2023, 5:30 p.m.); “Maddy” (August 16, 2023, 8:00 p.m.). Notably, two other PIA requests for the subpoena records also explicitly referred to “consumer records.” See “Phil Garcia” (September 17, 2023, 11:39 a.m.); “T” (September 29, 2023, 7:29 p.m.).

that ASA. Four other PIA requests specifically referred to such “**false entries**.”²³ Mr. Alford’s third PIA request asked about the ASAs “ability to **inhibit** [Mr. Alford’s] civil rights to file a statement of charges.” Five other PIA requests refer to this same specific scenario and accuse the ASA of “**intercepting**” those charging documents,²⁴ or refusing to let Mr. Alford file them without her “**permission**.”²⁵ Multiple requests also use the term “**weaponize**”²⁶ or “**aid and abet**”²⁷ to describe the ASA’s actions and intent. Again, this is not language we would expect to find repeated in truly distinct and separately-submitted PIA requests.

Many of the subpoena-related PIA requests contain another indicia of, at the least, coordination between requesters. Mr. Alford’s PIA request for these records contained statements about (1) why the subpoenas were issued and (2) the prosecutor associated with them:

The individuals issuing them indicated that they issued them on behalf of the State of Maryland for case 4B02440449 and case 0B02440417.

* * *

The prosecutor that was associated with the related cases (4B02440449 and 0B02440417) for which the subpoenas were issued was ASA Kathleen Copsey.

The BCSAO received six other subpoena-related PIA requests from purportedly different requesters—all within the span of twenty-four hours—that contained some version of these statements. And those statements were essentially uniform, both in substance and in structure:

The attorney that issued them indicated that he was issuing them for case 4B02440449 and 0B02440417 on behalf of the state of Maryland. The ASA

²³ See “CB” (September 16, 2023, 8:07 p.m.); “Lionel Rodriguez” (September 16, 2023, 8:49 p.m.); “Alex Ziegler” (September 20, 2023, 12:19 a.m.); “Blandine” (November 17, 2023, 1:38 a.m.).

²⁴ See “SM” (August 17, 2023, 8:13 p.m.); “Maddy” (August 19, 2023, 9:07 a.m.).

²⁵ See “Phil Garcia” (September 17, 2023, 11:39 a.m.); “Alex Ziegler” (September 20, 2023, 12:19 a.m.); “JD” (October 14, 2023, 5:56 p.m.).

²⁶ See “Tod” (August 23, 2023, 9:14 p.m.); “SM” (October 7, 2023, 9:25 a.m.).

²⁷ See “Pierre Nicolas” (August 18, 2023, 11:10 p.m.); “Fialon” (September 10, 2023, 11:49 a.m.); “CB” (September 16, 2023, 8:07 p.m.); “Lionel Rodriguez” (September 16, 2023, 8:49 p.m.); “Phil Garcia” (September 17, 2023, 11:39 a.m.).

associated with this case was ASA Kathleen Copsey. “CB” (August 15, 2023, 9:01 p.m.).

The attorney that issued these indicated that he issued them on behalf of the state of Maryland for case 4B02440449 and 0B02440417 to aid in the prosecution. The ASA that he was collaborating with was ASA Kathleen Copsey. “Fialon” (August 15, 2023, 9:23 p.m.).

This subpoena is related to the case 0B02440417, the State of Maryland vs. James Alford, as indicated in the notice. The prosecutor assigned to this case was ASA Kathleen Copsey. “Thuy Nguyen” (August 15, 2023, 11:39 p.m.).

The related Maryland case number is 0B02440449. The prosecutor assigned to this case was ASA Kathleen Copsey. “Matt” (August 16, 2023, 5:30 p.m.).

These subpoenas were issued for case 4B02440449 and 0B02440417 on behalf of the “state of Maryland.” The prosecutor assigned to these cases was a lady named Kathleen Copsey. “Maddy” (August 16, 2023, 8:00 p.m.).

The individual who requested the subpoenas and his attorney both indicated that they had issued them for cases 4B02440449 and 0B02440417, but I could not find them in either of these case files. They appear to be forged or counterfeited. They indicated that the prosecutor in charge of these cases was a lady named Kopsi. “Tod” (August 16, 2023, 8:45 p.m.).

We find it extremely hard to believe that requests sent by separate individuals, with no knowledge of one another, or of the other PIA requests, would contain such mirror-like text.

Finally, and more generally, we observe that so many of these requests contain very specific details of the underlying matters between Mr. Alford and Mr. Leibowitz, and the BCSAO’s handling of them. They contain specific dates when documents were filed or emailed to specific prosecutors, and the dates when certain things were said or done in court. Some requests set forth what records were or were not provided in discovery and narrate the particulars of negotiations between the prosecutors and counsel. In short, the Alford-related requests clearly come from someone who was well aware of all of the proceedings.²⁸ In his response to the complaint, Mr. Alford posits that the BCSAO has

²⁸ For example, on October 6, 2023, at 12:03 p.m., Mr. Alford sent the BCSAO’s PIA officer an email advising that he was “here at the Patapsco court” and had just spoken to “Miss Tacka to inquire about what happened to an ongoing case that got nolle prossed with out [sic] warning.” Mr. Alford wrote that Ms. Tacka told him the case was nol prossed “per [the PIA officer’s]

“upset a lot of people for a lot of different reasons,” thus implying that he (Mr. Alford) has no specific knowledge of these other Alford-related requests.²⁹ As discussed above, based on the PIA requests themselves—including both their timing and substantive content—we think such scenario is implausible. Rather, we think that the BCSAO has sufficiently demonstrated that Mr. Alford has either made or, at the very least, worked with, encouraged, or assisted others to send, all of the Alford-related requests.

We turn next to the BCSAO’s allegations themselves. This is the first time we have had occasion to review a complaint alleging that a request or pattern of requests is frivolous, vexatious, or made in bad faith. No Maryland court has interpreted or otherwise applied the language used in § 4-1A-04(b) in the context of the PIA. Thus, to determine the provision’s proper application, “we look first to the language of the statute, giving it its natural and ordinary meaning . . . on the tacit theory that the General Assembly is presumed to have meant what it said and said what it meant.” *Sabisch v. Moyer*, 466 Md. 327, 350 (2019). (quotations and citation omitted). We start by noting that the PIA does not define the words “frivolous,” “vexatious,” or “bad faith.” So, we will be guided broadly by how those terms are commonly understood. In light of our State Supreme Court’s observation that “it is proper to consult a dictionary or dictionaries for a term’s ordinary and popular meaning,” we “look to dictionary definitions as a starting point.” *Id.* at 366 (citations omitted). Thus, we set out the definitions of these terms found in both generalist and legal dictionaries.

directive and per [his] request and to reach out to [him] for any clarifications.” That same day, at 8:24 p.m., the BCSAO received a PIA request from “Adam Barry” for, among other things:

I would like to make a formal MPIA request for documents and information.

On 10/6/2023, Deputy Division Chief Christine Tacka indicated to Mr. James Alford that an individual named “Marke Cross” had put out a directive to nolle prosequi case 4B02470094 without the victims [sic] knowledge and just before the intended trial date, and that it was not Division Chief Dickman’s directive. Mr. Alford questioned Ms. Tacka approximately 3 times to clarify that it was in fact Marke Cross that put out this directive and not Mr. Dickman, to which Ms. Tacka confirmed this each time it was Marke Cross’s directive.

As such, I would like to request a copy of the memorandum of this communication, and all internal emails and communications related to this directive to nolle prosequi case 4B02470092 in violation of the victim’s rights and without the victims [sic] knowledge.

²⁹ We cannot help but note that, in the Board complaint Mr. Alford filed on November 7, 2023, he stated that he did not “feel comfortable attempting to mediate other people’s PIA requests that [he] didn’t even know what they were about and had no involvement in.” In light of the above, we find this statement, and any other such denials by Mr. Alford, lacking in credibility.

The Merriam-Webster Dictionary defines “frivolous” as, among other things, “having no sound basis (as in fact or law),” or “lacking in seriousness.” *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/frivolous> (last visited Mar. 27, 2024). The legal definition of the term is similar: “Lacking a legal basis or legal merit; manifestly insufficient as a matter of law.” *Black’s Law Dictionary* (11th ed. 2019). Vexatious means “causing vexation,” “intended to harass,” and “full of disorder or stress.” *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/vexatious> (last visited Mar. 27, 2024). Vexatious can also mean “without reasonable or probable cause or excuse; harassing; annoying.” *Black’s Law Dictionary* (11th ed. 2019). Finally, “bad faith” means “lack of honesty in dealing with other people,” *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/bad%20faith> (last visited Mar. 27, 2024), or “[d]ishonesty of belief, purpose, or motive,” *Black’s Law Dictionary* (11th ed. 2019).

In addition to these dictionary definitions, we are guided by how some of these terms have been defined and applied in other legal contexts. The Appellate Court of Maryland has interpreted the term “bad faith” in the context of Maryland’s Anti-SLAPP statute, which “aim[s] to weed out and deter lawsuits brought for the improper purpose of harassing individuals who are exercising their protected right to freedom of speech.” *MCB Woodberry Dev. LLC v. Council of Owners of Millrace Condo., Inc.*, 253 Md. App. 279, 296 (2021) (quotation and citation omitted); *see also* Md. Code Ann., Cts. & Jud. Proc. (“CJP”) § 5-807(a) (“‘SLAPP suit’ means a strategic lawsuit against public participation.”). To successfully invoke the provision, a defendant in an alleged SLAPP suit must demonstrate, among other things, that the lawsuit was “[b]rought in bad faith.”³⁰ CJP § 5-807(b)(1).

Finding that the lawsuit at issue was indeed a SLAPP suit, the Court looked to cases interpreting Maryland Rule 1-341,³¹ which “define[d] ‘bad faith’ to mean the pursuit of litigation ‘vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons.’” *MCB Woodberry Dev. LLC*, 253 Md. at 307 (quoting *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 268 (1991)). The Court found the definition “consistent with frequent dictionary definitions of ‘bad faith,’ which emphasize dishonest motivation.” *Id.* In reaching its decision, the Court outlined four factors in that case that were relevant to the bad faith determination: (1) the timing of the suit; (2) an unreasonable and unsupported request for punitive damages that was “evidence” that the lawsuit’s “true intent was intimidation”; (3) the “abusive” discovery requests by the plaintiff; and (4) the “conclusory” nature of the allegations that were “devoid of any specific facts.” *Id.* at 309-

³⁰ In the 2024 legislative session, the General Assembly is considering bills that would remove the bad faith requirement. *See* S.B. 568, 2024 Leg., Reg. Sess. (First Reader); H.B. 330, 2024 Leg., Reg. Sess. (First Reader).

³¹ The Rule applies when a court “finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification.” Md. Rule 1-341(a)

311. Notably, the Court also held that, in that case, “bad faith is susceptible of being determined as a matter of law by the court on a motion to dismiss an alleged SLAPP suit.” *Id.* at 305.

In another case, albeit one concerning attorney discipline, the Supreme Court of Maryland detailed an attorney’s prolonged unethical and unprofessional conduct, concluding that many of his filings and communications were “frivolous” and “vexatious.” *See Att’y Grievance Comm’n v. Rheinstein*, 466 Md. 648 (2020). Among other things, the Court found that the attorney “advanced baseless and unsubstantiated claims” and filed pleadings that were designed to harass, intimidate and delay. *Id.* at 729-30. The Court also agreed with the hearing court’s findings that the attorney, in his communications with opposing counsel, unjustly attacked those attorneys’ characters, *id.* at 690, and used language that was abusive and profane, *see id.* at 697-99. While the case was narrowly concerned with allegations of attorney misconduct—and we acknowledge that attorneys are held to higher ethical standards than the general public—the Court’s use of the terms “frivolous” and “vexatious” to describe conduct that was, by turns, abusive, harassing, and dishonest in motive, is instructive.³²

Finally, we also take some broad direction from a final decision of Connecticut’s Freedom of Information Commission (“FOIC”) that concluded that a requester was vexatious under that state’s “vexatious requester” statute.³³ *See Town of East Lyme v. Godbout*, FOIC PRVR #1 (Feb. 26, 2020), https://portal.ct.gov/-/media/FOI/FinalDecisions/2020/Feb26/PRVR_1.pdf?la=en (last visited Mar. 27, 2024). While the egregious conduct detailed in the FOIC decision differs from the conduct here in important ways—e.g., the requester there on one occasion appeared at agency offices with a video camera, *id.* at 10, and, on another, physically blocked an elementary school principal from entering a building, *id.* at 11—we nevertheless note the broader conclusions about the requests and conduct that the FOIC drew and found relevant to its decision. For instance, the FOIC found that the “requests and conduct [were] often disrespectful, abusive

³² Interestingly, the hearing court alluded to what was likely the primary motivation underlying the attorney’s actions in the context of finding that the attorney violated the rule relating to competence. *Rheinstein*, 466 Md. at 706. Specifically, that the attorney had “developed an elaborate conspiracy theory involving Imagine, its principals, attorneys, lenders and other associates and embarked on a course of conduct, disconnected from the facts and applicable law—both substantive and procedural—to prove his theory.” *Id.*

³³ *See* Conn. Gen. Stat. Ann. § 1-206(b)(6) (allowing that “a public agency may petition the commission for relief from a requester that the public agency alleges is a vexatious requester”). Connecticut’s provision differs from Maryland’s in some ways, including the relief available. *See id.* (“Upon a grant of such petition, the commission may provide appropriate relief commensurate with the vexatious conduct, including, but not limited to, an order that the agency need not comply with future requests from the vexatious requester for a specified period of time, but not to exceed one year.”)

and concerning,” and “taunting in nature, if not worse.” *Id.* at 15. The FOIC found that the “requests and conduct [made] a mockery of public access,” and that they were “recurring, repetitive and unrelenting,” suggesting that “the objective of such requests and conduct [was] often to annoy or hassle rather than to obtain public access.” *Id.* at 15-16. And, the FOIC found that the requests and conduct had a “decidedly detrimental effect” on the agencies. *Id.* at 16. These findings inform some of the questions we ask regarding the PIA requests and other related conduct at issue here.

With the broad guideposts outlined above in mind, we observe at the outset that § 4-1A-04(b) is worded in the disjunctive—a custodian must demonstrate that a “request or pattern of requests is frivolous, vexatious, *or* in bad faith” in order to obtain relief. § 4-1A-04(b)(1) (emphasis added); *see United Parcel Serv. v. Strothers*, 482 Md. 198, 221 n.11 (2022) (interpreting a disjunctively worded provision in the Workers Compensation Act and concluding that the worker only need demonstrate that one of two statutorily enumerated conditions is met to warrant relief). Thus, if we determine, e.g., that the Alford-related requests are vexatious but not frivolous or in bad faith, then the BCSAO is nevertheless entitled to relief under the statute.

We take each term in turn, starting with “frivolous.” The definitions and cases discussed above suggest that a PIA request is frivolous when it has no basis in law and lacks in legal merit or foundation. Though the Alford-related requests here are certainly repetitive and, to the extent that some sought records that the BCSAO already advised it did not have, could be said to lack merit, we cannot find that the pattern of requests rises to the level of “frivolous” in that way.

However, we do find, based on “the totality of the circumstances,” § 4-1A-04(b)(3), that the BCSAO has sufficiently demonstrated that the pattern of Alford-related requests is both vexatious and in bad faith. Again turning to the sources cited above, we discern that a PIA request or pattern of PIA requests may be “vexatious” when they are intended to harass or annoy a custodian, and when they are “recurring, repetitive and unrelenting,” *Town of East Lyme*, FOIC PRVR # 1, at 16, and contain abusive, disparaging, or profane language. The requests here were certainly recurring and repetitive. All of them were repetitive to a degree in that they sought records related to James Alford, Louis Leibowitz, and specific cases involving them. There is also repetition between subsets of requests in their particular focus. For instance, we count seven substantially similar requests for the subpoena-related records over three days in August alone, and four aimed at the so-called “false entry” records over a period of three days in September.

Further, given the mushroom effect that tended to occur when the BCSAO issued substantive responses, the requests could fairly be characterized as unrelenting. For example, after the BCSAO issued its ten-day letter on August 15, 2023, it received seven new PIA requests within a span of twenty-four hours. And, after it sent out several substantive response letters on September 16, 2023, the BCSAO received another five PIA

requests in quick succession. The same occurred again after letters went out on September 28, 2023.

But, in our view, a significant additional indication of the requests' vexatious nature is in their content, and the content of many communications surrounding them, which evinces a clear intent to harass and annoy the BCSAO staff. Many of the requests were laced with disrespectful and rude comments and unfounded accusations. See, for example:

"Tod" (September 26, 2023, 7:00 p.m.) (suggesting that "you might want to update your fucking MPIA contact roster . . . before you start bitching and moaning about 'duplicative and vexatious' requests," and that perhaps "the BCSAO is not the job for you," "[u]nless you're trash and have no standards").

"Tod" (September 27, 2023, 3:23 p.m.) (referring to the PIA officer as "Markie," and stating, "I'm sorry your office is incompetent and throwing you under the bus," and that he is "probably a good person, just working in a bad place").

"Pierre Nicolas" (September 28, 2023, 9:30 p.m.) ("I don't need to speak to you on the phone, and that was just a way to not put your lies in writing.").

"Fialon" (September 28, 2023, 9:53 p.m.) (asking why an ASA is "so incompetent that she falsely enters into judicial records that victims don't want to proceed with cases," or why the BCSAO is "so incompetent that they can't even properly locate a rape case").

"Maddy" (October 8, 2023, 4:13 p.m.) ("I just wanted to let you know that you're a bad person and that's the type of things bad people do.").

"Rachel Garcia" (October 16, 2023, 1:25 p.m.) ("Revenge porn = bad. You = bad.").

"Alex Ziegler" (October 26, 2023, 7:25 a.m.) ("I just wanted to highlight that this is illegal under the PIA, and that might be why you are having so many complaints and inquiries into your misconduct.").

"CB" (October 26, 2023, 1:35 p.m.) ("That office probably hates you.").

"Adam Barry" (October 28, 2023, 1:25 p.m.) ("Have a wonderful day and good luck with your attorney grievance endeavors.").

Also indicative of an intent to harass and annoy is the fact that, after the BCSAO issued substantive response letters to Mr. Alford, the requests for those same records continued to come in. On August 17, 2023, the BCSAO advised that it was unable to locate responsive records related to the Maryland and California subpoenas Mr. Alford had provided. Then, on September 16, 2023, the BCSAO advised Mr. Alford, in two separate letters (one for each PIA request), that it was unable to locate responsive records of (1) any plea bargains or an ASA “inhibiting” Mr. Alford’s right to file an application for a statement of charges or report a crime and (2) the “false entry” into a court record that an ASA had allegedly made. Those responses were PIA conforming, as we explained in PIACB 24-27 (Mar. 6, 2024). And, those responses contained information about the PIA’s options for contesting the BCSAO’s response—i.e., petition a circuit court for judicial review or contact the Ombudsman. Notably “continue to send PIA requests for the same records” is not one of those options. We recognize that Mr. Alford did, on September 16, 2023, seek mediation through the Ombudsman. But, he also persisted in making and/or orchestrating additional PIA requests for the same records the BCSAO already told him it did not have. He knew what the BCSAO’s response would be. This strongly suggests that his intent was to flood the BCSAO with PIA requests for records related to himself for which he already had received responses.

Considering the totality of the circumstances, we also find that the Alford-related requests were made in bad faith. Drawing again from the sources discussed above, we think PIA requests may be made in bad faith when there is some clear dishonesty in the requester’s motive³⁴ and when they “make a mockery of public access” by, for example, “pretending to be someone else when making a request.” *Town of East Lyme*, FOIC PRVR # 1, at 15. Viewed in their totality, the Alford-related requests do not seem to be truly concerned with obtaining public records. Rather, they appear more intended to harass (as explained above) and to serve as a vehicle for invectives and other unsupported accusations of serious misconduct aimed at BCSAO employees. Two of the Alford-related requests refer to allegedly false and “defamatory” statements made by BCSAO employees. We find such references somewhat ironic in the face of the many unsubstantiated and arguably bad faith allegations set forth in these PIA requests and other communications to the BCSAO. And, as discussed above, while we cannot conclusively find that Mr. Alford is “pretending” to be all of these other requesters and operating their email accounts himself, we find Mr. Alford’s implicit assertions that he has nothing whatsoever to do with them unconvincing.

³⁴ We are mindful that the PIA generally forbids a custodian from considering the requester’s purpose for making a request. § 4-204(a). However, we think that “purpose” here refers to the purpose to which the requester intends to put the records—e.g., to write a newspaper story, understand an agency’s action, or prepare a post-conviction petition. When the true purpose of a PIA request is to harass an agency or play “gotcha,” the spirit of the PIA is diminished. After all, the PIA was enacted to provide “access to information about the affairs of government and the official acts of public officials and employees,” § 4-103(a), and not to harass those officials and employees, or make unsubstantiated accusations of misconduct.

Upon viewing the Alford-related requests as a whole, there is a certain amount of deception present—and that deception is indicative of bad faith.

Finally, we note that the PIA directs us to consider a custodian’s “efforts to cooperate with the applicant.” § 4-1A-04(b)(3). Despite the early onslaught of these requests—indeed, the BCSAO received thirty-nine Alford-related requests in the span of about a month—the BCSAO attempted to respond in the manner required by the PIA. The BCSAO issued more than thirty substantive response letters, several other ten-day letters, and otherwise responded to the requesters’ emails. The BCSAO also tried on numerous occasions to arrange phone calls at times that would be convenient for the requesters, but all of those efforts were uniformly rebuffed. In our view, this suggests not only that the requesters were not really concerned with obtaining the records that they requested, but also that they preferred the relative anonymity that email-based communication provides.

It is abundantly clear that Mr. Alford is unhappy with how the BCSAO handled the underlying matters related to him, and he has used the PIA in his attempts to right those perceived wrongs. The PIA however, may not be used in the fashion it was here to further such a campaign.

Conclusion

We conclude that the BCSAO has marshaled sufficient evidence to demonstrate by a preponderance of the evidence that the Alford-related requests are fairly attributable to PIA applicant James Alford. Our conclusion there is based on the timing, similarity, and the content of the PIA requests. “[B]ased on the totality of the circumstances,” § 4-1A-04(b)(3), we also conclude that the BCSAO has shown that the Alford-related requests are both vexatious and made in bad faith. These circumstances include the “the number and scope” of the requests, *id.*, the timing of the requests, and the rude and disrespectful language and tone many of the requesters exhibit. In addition, the BCSAO made sufficient “efforts to cooperate with the applicant,” without similar efforts on Mr. Alford’s or any other requester’s part. All of these factors lead us to conclude that the Alford-related requests were intended to harass and annoy the BCSAO, and to serve as a platform for wielding serious (and largely unsubstantiated) accusations of misconduct at its employees, and thus were not truly made for purposes of obtaining public records.³⁵ Therefore, we order that the BCSAO need not respond to any of the Alford-related requests identified in its complaint, nor need it respond to any subsequent or future requests for records related to James Alford, Louis Leibowitz, and the matters between them heard in the District Court of Maryland for Baltimore City from early 2022 through the end of 2023. § 4-1A-04(b)(3)(i); COMAR 14.02.07.04D(2).

³⁵ We make no pronouncement concerning interpretation or application of the provision of the PIA under which this complaint was filed beyond our application to the totality of the unique facts of this matter, in which we consider no single fact or consideration to be dispositive.

Public Information Act Compliance Board*

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* Board Member Deborah Moore-Carter did not participate in the deliberation, preparation, or issuing of this decision.